

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JOSEPH L. DEXTER and
SHIRLEY A. DEXTER,

NO. CIV. S 04-2643 MCE KJM

Plaintiffs,

ORDER

FORWARD AIR, INC.,
STARWOOD HOTELS & RESORTS
WORLDWIDE, INC., and
THE HERTZ CORPORATION,

Defendants.

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The present action involves alleged driver negligence that occurred on a public roadway in Houston, Texas. On December 13, 2003, a tractor-trailer owned by Forward Air, Inc., rear-ended a shuttle van carrying Joseph L. Dexter ("Mr. Dexter"), a pilot for Continental Airlines. (Def's Mot. at 2:6-3:12; Opp'n 2:9-27.) Plaintiffs Joseph L. Dexter and Shirley A. Dexter (collectively "Plaintiffs") filed a negligence action in the Eastern District of California on December 14, 2004. Defendants Forward Air,

1 Inc., Starwood Hotels & Resorts Worldwide, Inc., and The Hertz
2 Corp., (collectively "Defendants") have asked the Court to
3 transfer the case to the Southern District of Texas based upon
4 convenience of the parties and witnesses and a lack of
5 "connection(s)" with the Eastern District of California. For the
6 reasons discussed below, Defendants' motion for change of venue
7 is DENIED.¹

8 The present action is before this Court on the basis of
9 diversity jurisdiction. Plaintiffs are citizens of California
10 claiming over \$75,000 in damages and Defendants are citizens of
11 other states. 28 U.S.C. § 1332(a). Furthermore, as defined by
12 28 U.S.C. § 1391(c), all defendants reside in the Eastern
13 District of California (Opp'n at 1:23-26), making the Eastern
14 District of California a proper venue.

15 "For the convenience of parties and witnesses, in the
16 interest of justice, a district court may transfer any civil
17 action to any other district . . . where it might have been
18 brought." 28 U.S.C. § 1404(a).

19 Under § 1404(a), this Court has discretion "to adjudicate
20 motions for transfer according to an individualized, case-by-case
21 consideration of convenience and fairness." Stewart Org. v.
22 Ricoh Corp., 487 U.S. 22, 29 (1988) (internal quotations and
23 citations omitted); Jones v. GNC Franchising, Inc., 211 F.3d 495,
24 498 (9th Cir. 2000). "A motion to transfer venue under § 1404(a)
25 requires the court to weigh multiple factors in its determination
26 whether transfer is appropriate in a particular case. For

27
28 ¹ This matter was deemed suitable for decision without oral
argument. Local Rule 78-230(h).

1 example, the court may consider" the following, as applicable: 1)
2 the Plaintiff's choice of forum, 2) respective party contacts
3 with the forum, 3) contacts relating to the Plaintiff's cause of
4 action in the forum, 4) the cost of litigation in either forum,
5) the ease of access to sources of proof, 6) the complexity of
6 the governing law, 7) the availability of compulsory process to
7 compel attendance of unwilling non-party witnesses, and finally
8) other factors that, in the interest of justice, impact the
9 convenience or fairness of a particular venue. Jones, 211 F.3d
10 at 498.

11 In this case, the Court finds that the first and third Jones
12 guidelines, i.e., Plaintiffs' choice of forum and the contacts in
13 the forum relating to Plaintiffs' cause of action, are
14 dispositive as to the question of appropriate venue. The first
15 and third guidelines either address or subsume the remaining
16 guidelines, many of which the Court finds to be of little moment
17 given the facts in this case and the convenient flow of
18 information afforded by modern communication systems.

19 With respect to the first Jones guideline, California is
20 Plaintiffs' choice of forum. The Court affords considerable
21 deference to the general principle that "the plaintiff's choice
22 of forum should rarely be disturbed," especially when evidence
23 and witnesses vital to Plaintiffs' claims are located within the
24 jurisdiction of that forum. Gulf Oil Corp. v. Gilbert, 330 U.S.
25 501, 508 (1947) (superceded by statute on other grounds); Norwood
26 v. Kirkpatrick, 349 U.S. 29, 32 (1955); Jones, 211 F.3d at 499
27 (attributing significant weight to the location of "relevant
28 witnesses and other sources of proof" when considering a

1 particular venue).

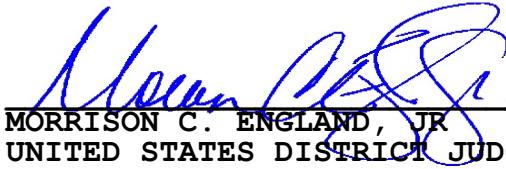
2 With respect to the third Jones guideline, in consideration
3 of a potential trial and trial preparation, the Court finds that
4 "more of the relevant witnesses and other sources of proof [are]
5 located in California." Jones, 211 F.3d at 499. Defendants
6 assert that the majority of the liability witnesses are located
7 in Texas (Reply at 3:14-18), while Plaintiffs assert that the
8 majority of the damages witnesses are located in California
9 (Opp'n at 8:9-12). The Court finds that this case turns
10 primarily on a question of damages, rather than a question of
11 liability. Given the basic facts (i.e., that a moving truck
12 rear-ended a stationary vehicle and caused a personal injury),
13 any liability issues will be dramatically overshadowed by the
14 issues pertaining to Plaintiffs' injuries.

15 Due to the latency of Mr. Dexter's injuries, he only spent a
16 few hours under medical care in Texas before he returned to the
17 Eastern District of California. (Opp'n at 3:2-3.) Consequently,
18 the vast majority of Plaintiffs' diagnosis, treatment, and
19 rehabilitation occurred in Eastern District of California. Not
20 surprisingly, all of the medical personnel who managed Mr.
21 Dexter's care reside in the Eastern District of California.
22 (Opp'n at 3:5-18.) Furthermore, the flight surgeon, whose
23 approval Mr. Dexter needs in order to return to work, lives in
24 the Eastern District of California. (Opp'n at 3:19-24.) Finally,
25 Mr. Dexter's primary care physicians, who may be called as
26 witnesses if Defendants argue the existence of any preexisting
27 medical conditions, are all located in the Eastern District of
28 California. (Opp'n at 3:25-28.)

1 In light of the controlling federal precedent and in the
2 interest of maximizing convenience and fairness, the Court finds
3 that the Eastern District of California is a more appropriate
4 venue than the Southern District of Texas. For the
5 aforementioned reasons, Defendants' motion for change of venue to
6 the Southern District of Texas is DENIED.

7 **IT IS SO ORDERED.**

8 DATED: May 24, 2005

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11 MORRISON C. ENGLAND, JR.
12 UNITED STATES DISTRICT JUDGE